

**JOINDER AND SEVERANCE — Defendant must object to joinder and renew objection at trial or he waives the issue except for fundamental error —  
Revised 11/2009**

Rule 13.4(c), Ariz. R. Crim. P., requires a defendant to both make a timely motion to sever, and to renew that motion at trial. That Rule states:

c. Timeliness and Waiver. A defendant's motion to sever offenses or defendants must be made at least 20 days prior to trial or at the omnibus hearing and, if denied, renewed during trial at or before the close of the evidence. If a ground not previously known arises during trial, the defendant must move for severance at or before the close of the evidence. Severance is waived if a proper motion is not timely made and renewed.

In *State v. Laird*, 186 Ariz. 203, 206, 920 P.2d 769, 772 (1996), *cert. denied* 519 U.S. 1032 (1996), the Arizona Supreme Court cited the requirement of Rule 13.4(c), Ariz.R.Crim.P., that a defendant renew a motion to sever at trial. *Laird* had not renewed his motion to sever at trial; his failure to do so resulted in waving the severance issue, so the Arizona Supreme Court reviewed the issue only for fundamental error.

In *State v. Flythe*, 219 Ariz. 117, 120, 193 P.3d 811, 814 (App. 2008), the court “strictly applied the waiver provisions of rule 13.4(c), particularly the explicit requirement that motions for severance be renewed during trial” and held that Flythe had waived the issue of severance by failing to renew the motion to sever during trial, *even though Flythe’s co-defendant renewed his own motion to sever*.